

Fishery Conservation and Management

§ 660.60

specifications and management measures process.

(l) *Black rockfish harvest guideline.* The commercial tribal harvest guideline for black rockfish off Washington State is specified at § 660.50(f)(1), subpart C.

(m) *Pacific halibut bycatch allocation.* The Pacific halibut fishery off Washington, Oregon and California (Area 2A in the halibut regulations) is managed under regulations at 50 CFR part 300, subpart E. The PCGFMP sets the trawl bycatch mortality limit at 15 percent of the Area 2A total constant exploitation yield (TCEY) for legal size halibut (net weight), not to exceed 130,000 pounds annually for legal size halibut (net weight) for 2012 through 2014 and, beginning in 2015, not to exceed 100,000 pounds annually for legal size halibut (net weight). The TCEY used for these calculations will be the best estimate of the TCEY available from the International Pacific Halibut Commission at the time of the calculation. For the purpose of this paragraph, the term “legal sized” halibut refers to halibut with a total length of 32 inches and above, or O32, and the term “sublegal sized” halibut refers to halibut under 32 inches in total length, or U32. To determine the trawl bycatch mortality limit, the pounds of halibut available to the trawl fleet will be expanded from the legal sized halibut mortality (net weight) to a round weight legal and sublegal sized amount. To convert from net weight to round weight, multiply by the conversion factor used by the International Pacific Halibut Commission at the time of calculation for net weight to round weight. To convert from legal sized halibut to legal and sublegal sized halibut, multiply by the conversion factor from the NMFS trawl fishery bycatch report as reported to the International Pacific Halibut Commission at the time of calculation for legal sized to legal and sublegal sized halibut. The bycatch allocation percent can be adjusted downward or upward through the biennial specifications and management measures process but the upper bound on the maximum pounds of allocation can only be changed through an FMP amendment. Part of the overall total mortality limit is a set-aside of 10 mt of Pacific

halibut (legal and sublegal, round weight), to accommodate bycatch in the at-sea Pacific whiting fishery and in the shorebased trawl fishery south of 40°10' N. lat. (estimated to be approximately 5 mt each). This set-aside can be adjusted through the biennial specifications and management measures process.

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 78382, Dec. 15, 2010; 75 FR 82300, Dec. 30, 2010; 76 FR 27529, May 11, 2011; 76 FR 53835, Aug. 30, 2011; 76 FR 74737, Dec. 1, 2011; 77 FR 28507, May 15, 2012]

§ 660.60 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council. Regulations under this subpart may be promulgated, removed, or revised during the fishing year. Any such action will be made according to the framework standards and procedures in the PCGFMP and other applicable law, and will be published in the FEDERAL REGISTER.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), fishery harvest guidelines, commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) *Routine management measures.* In addition to the catch restrictions in subparts D through G of this part, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the FEDERAL REGISTER if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. Routine management measures that may be revised during the fishing year via this process are implemented in paragraph (h) of this section, and in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F. Most trip, bag, and size limits, and area closures in the groundfish fishery have been designated “routine,” which means they may be changed rapidly after a single Council meeting. Council meetings are held in the months of March, April, June, September, and November. Inseason changes to routine management measures are announced in the FEDERAL REGISTER pursuant to the requirements of the Administrative Procedure Act (APA). Changes to trip limits are effective at the times stated in the FEDERAL REGISTER. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit. This means that, unless otherwise announced in the FEDERAL REGISTER, off-loading must begin before the time a fishery closes or a more restrictive trip limit takes effect. The following catch restrictions have been designated as routine:

(1) *Commercial Limited Entry and Open Access Fisheries.* (i) Trip landing and frequency limits, size limits, all gear. Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, black rockfish, blue rockfish, splitnose rockfish, chilipepper rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and

minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the other flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.11, subpart C; Pacific whiting; lingcod; Pacific cod; spiny dogfish; cabezon in Oregon and California and “other fish” as a complex consisting of all groundfish species listed at § 660.11, subpart C and not otherwise listed as a distinct species or species group. Specific to the IFQ fishery, sub-limits or aggregate limits may be specified for the following species: longnose skate, big skate, California skate, California scorpionfish, leopard shark, soupfin shark, finescale codling, Pacific rattail (grenadier), ratfish, kelp greenling, shortbelly, and cabezon in Washington. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraphs (c)(1)(i)(A) and (B) of this section.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to protect overfished species; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing limits and frequency limits based on gear type, closed seasons, and bycatch limits.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(iii) *Type of limited entry trawl gear on board.* Limits on the type of limited

entry trawl gear on board a vessel may be imposed on a biennial or more frequent basis. Requirements and restrictions on limited entry trawl gear type are found at § 660.130(b).

(iv) *List of IFQ species documented on observer form.* As specified at §§ 660.112(b)(1)(xiii) and 660.140(h)(1)(i), observer or catch monitor coverage while in port depends on documentation of specified retained IFQ species while the vessel is at sea by the observer program on a form. The list of IFQ species documented on the observer program form may be modified on a biennial or more frequent basis.

(2) *Recreational fisheries all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with State regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to protect and rebuild overfished species; to enhance the quality of the recreational fishing experience.

(iii) *Season duration restrictions.* To spread the available catch over a large number of anglers; to protect and rebuild overfished species; to avoid waste; to enhance the quality of the recreational fishing experience.

(3) *All fisheries, all gear types, depth-based management measures.* Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.70 through 660.74. Depth-based management measures and the setting of closed areas may be used: to

protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

(d) *Automatic actions.* Automatic management actions may be initiated by the NMFS Regional Administrator without prior public notice, opportunity to comment, or a Council meeting. These actions are nondiscretionary, and the impacts must have been taken into account prior to the action. Unless otherwise stated, a single notice will be published in the FEDERAL REGISTER making the action effective if good cause exists under the APA to waive notice and comment.

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached.

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached.

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(iv) Reapportionment of the unused portion of the tribal allocation of Pacific whiting to the IFQ, mothership and catcher processor Pacific whiting fisheries.

(v) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(vi) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4), when NMFS projects a sector-specific bycatch limit will be

reached before the sector's whiting allocation.

(2) Automatic actions are effective when actual notice is sent by NMFS. Actual notice to fishers and processors will be by email, Internet (www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm), phone, fax, letter, or press release. Allocation reapportionments will be followed by publication in the FEDERAL REGISTER, in which public comment will be sought for a reasonable period of time thereafter.

(e) *Prohibited species.* Groundfish species or species groups under the PCGFMP for which quotas have been achieved and/or the fishery closed are prohibited species. In addition, the following are prohibited species:

- (1) Any species of salmonid.
- (2) Pacific halibut.

(3) Dungeness crab caught seaward of Washington or Oregon.

(f) *Exempted fishing permits (EFP).* (1) The Regional Administrator may issue EFPs under regulations at § 660.30, subpart C, for compensation with fish for collecting resource information. Such EFPs may include the collecting of scientific samples of groundfish species that would otherwise be prohibited for retention.

(2) The Regional Administrator may also issue EFPs under regulations at 50 CFR part § 600.745 for limited testing, public display, data collection, exploratory, health and safety, environmental cleanup, and/or hazard removal purposes, the target or incidental harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited.

(3) U.S. vessels operating under an EFP are subject to restrictions in subparts C through G of this part unless otherwise provided in the permit.

(g) *Applicability.* Groundfish species harvested in the territorial sea (0–3 nm) will be counted toward the catch limitations in Tables 1a through 2d of this subpart, and those specified in subparts D through G, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F.

(h) *Fishery restrictions*—(1) *Commercial trip limits and recreational bag and boat limits.* Commercial trip limits and recreational bag and boat limits defined in Tables 1a through 2d of this subpart, and those specified in subparts D through G of this part, including Tables 1 (North) and 1 (South) of subpart D, Tables 2 (North) and 2 (South) of subpart E, Tables 3 (North) and 3 (South) of subpart F must not be exceeded.

(2) *Landing.* As stated at § 660.11, subpart C (in the definition of “Landing”), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. All fish from an IFQ landing must be offloaded from the vessel before a new fishing trip begins. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D. Catcher vessels in the mothership sector must transfer all catch from a haul to the same vessel registered to an MS permit prior to the gear being set for a subsequent haul. Catch may not be transferred to a tender vessel.

(3) *Fishing ahead.* Unless the fishery is closed, a vessel that has landed its cumulative or daily limit may continue to fish on the limit for the next legal period, so long as no fish (including, but not limited to, groundfish with no trip limits, shrimp, prawns, or other nongroundfish species or shellfish) are landed (offloaded) until the next legal period. Fishing ahead is not allowed during or before a closed period.

(4) *Weights and percentages.* All weights are round weights or round-weight equivalents unless otherwise specified. Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(5) *Size limits, length measurement, and weight conversions.* (i) *Length measurement.* Unless otherwise specified, size limits in the commercial and recreational groundfish fisheries apply to the “total length,” which is the longest measurement of the fish without mutilation of the fish or the use of force to extend the length of the fish.

No fish with a size limit may be retained if it is in such condition that its length has been extended or cannot be determined by these methods. For conversions not listed here, contact the state where the fish will be landed. Washington state regulations require all fish with a size limit landed into Washington to be landed with the head on.

(A) *Whole fish*. For a whole fish, total length is measured from the tip of the snout (mouth closed) to the tip of the tail in a natural, relaxed position.

(B) *"Headed" fish*. For a fish with the head removed ("headed"), the length is measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(C) *Filets*. A filet is the flesh from one side of a fish extending from the head to the tail, which has been removed from the body (head, tail, and backbone) in a single continuous piece. Filet lengths may be subject to size limits for some groundfish taken in the recreational fishery off California (see subpart G of this part). A filet is measured along the length of the longest part of the filet in a relaxed position; stretching or otherwise manipulating the filet to increase its length is not permitted.

(ii) *Weight conversions and size limits*. To determine the round weight, multiply the processed weight times the conversion factor. Federal commercial groundfish regulations do not supersede more restrictive state commercial groundfish regulations, including landings requirements regarding groundfish species or the condition in which they may be landed.

(A) Limited entry fixed gear or open access fisheries. The weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit or other allocation. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon, and California and may be subject to change by those states. Fishery participants should contact fishery en-

forcement officials in the state where the fish will be landed to determine that state's official conversion factor.

(1) *Sablefish*. The following conversion applies to both the limited entry fixed gear and open access fisheries when trip limits are in effect for those fisheries. For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6 (multiply the headed and gutted weight by 1.6 to determine the round weight).

(2) *Lingcod*. The following conversions apply in both limited entry fixed gear and open access fisheries.

(i) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(ii) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(iii) The weight conversion factor for headed and gutted lingcod is 1.5. The conversion factor for lingcod that has only been gutted with the head on is 1.1.

(B) *Shorebased IFQ Program*. For vessels landing sorted catch, the weight conversions for purposes of applying QP are provided below.

(1) *Sablefish*. The weight conversion factor for headed and gutted (eviscerated) sablefish is 1.6.

(2) *Lingcod*. The following conversions apply:

(i) The minimum size limit lingcod North of 42° N. lat., with the head removed, is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(ii) The minimum size limit for lingcod South of 42° N. lat., with the head removed, is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(iii) The weight conversion factor for headed and gutted (eviscerated) lingcod is 1.5; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(3) *Pacific whiting*. For headed and gutted Pacific whiting (head removed just in front of the collar bone and viscera removed,) the weight conversion factor is 1.56; and for headed and

gutted Pacific whiting with the tail removed the weight conversion factor is 2.0.

(4) *Rockfish (including thornyheads), except POP*. For headed and gutted (eviscerated), the weight conversion factor is 1.75; for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed,) the weight conversion factor is 1.66; for headed and gutted, eastern cut (head removed just behind the collar bone and viscera removed,) the weight conversion factor is 2.0.

(5) *Pacific ocean perch (POP)*. For headed and gutted (eviscerated), the weight conversion factor is 1.6.

(6) *Pacific cod*. For headed and gutted (eviscerated), the weight conversion factor is 1.58.

(7) *Dover sole, English sole, and “other flatfish”*. For headed and gutted (eviscerated), the weight conversion factor is 1.53.

(8) *Petrale sole*. For headed and gutted (eviscerated), the weight conversion factor is 1.51.

(9) *Arrowtooth flounder*. For headed and gutted (eviscerated), the weight conversion factor is 1.35.

(10) *Starry flounder*. For headed and gutted (eviscerated), the weight conversion factor is 1.49.

(6) *Sorting*. Trawl fishery sorting requirements are specified at § 660.130(d), subpart D. Limited entry fixed gear fishery sorting requirements are specified at § 660.230(c), subpart E, and Open access fishery sorting requirements are specified at § 660.330(c), subpart F.

(7) *Crossover provisions*. Crossover provisions apply to two activities: Fishing on different sides of a management line, or fishing in both the limited entry and open access fisheries. NMFS uses different types of management areas for West Coast groundfish management, such as the *north-south management areas* as defined in § 660.11. Within a management area, a large ocean area with northern and southern boundary lines, trip limits, seasons, and conservation areas follow a single theme. Within each management area, there may be one or more conservation areas, defined at § 660.11 and §§ 660.70 through 660.74. The provisions within this paragraph apply to vessels fishing in different management areas. Cross-

over provisions also apply to vessels that fish in both the limited entry and open access fisheries, or that use open access non-trawl gear while registered to limited entry fixed gear permits. Fishery specific crossover provisions can be found in subparts D through F of this part.

(i) *Fishing in management areas with different trip limits*. Trip limits for a species or a species group may differ in different management areas along the coast. The following crossover provisions apply to vessels fishing in different geographical areas that have different cumulative or “per trip” trip limits for the same species or species group, with the following exceptions. Such crossover provisions do not apply to: IFQ species defined at § 660.140(c), for vessels that are declared into the Shorebased IFQ Program (see § 660.13(d)(5)(iv)(A), for valid Shorebased IFQ Program declarations), species that are subject only to daily trip limits, or to the trip limits for black rockfish off Washington, as described at § 660.230(e) and § 660.330(e).

(A) *Going from a more restrictive to a more liberal area*. If a vessel takes and retains any groundfish species or species group of groundfish in an area where a more restrictive trip limit applies before fishing in an area where a more liberal trip limit (or no trip limit) applies, then that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(B) *Going from a more liberal to a more restrictive area*. If a vessel takes and retains a groundfish species or species group in an area where a higher trip limit or no trip limit applies, and takes and retains, possesses or lands the same species or species group in an area where a more restrictive trip limit applies, that vessel is subject to the more restrictive trip limit for the entire period to which that trip limit applies, no matter where the fish are taken and retained, possessed, or landed.

(C) *Fishing in two different areas where a species or species group is managed with different types of trip limits*. During the fishing year, NMFS may implement

management measures for a species or species group that set different types of trip limits (for example, per trip limits versus cumulative trip limits) for different areas. If a vessel fishes for a species or species group that is managed with different types of trip limits in two different areas within the same cumulative limit period, then that vessel is subject to the most restrictive overall cumulative limit for that species, regardless of where fishing occurs.

(D) *Minor rockfish.* Several rockfish species are designated with species-specific limits on one side of the 40°10' N. lat. management line, and are included as part of a minor rockfish complex on the other side of the line. A vessel that takes and retains fish from a minor rockfish complex (nearshore, shelf, or slope) on both sides of a management line during a single cumulative limit period is subject to the more restrictive cumulative limit for that minor rockfish complex during that period.

(1) If a vessel takes and retains minor slope rockfish north of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land splitnose rockfish up to its cumulative limit south of 40°10' N. lat., even if splitnose rockfish were a part of the landings from minor slope rockfish taken and retained north of 40°10' N. lat.

(2) If a vessel takes and retains minor slope rockfish south of 40°10' N. lat., that vessel is also permitted to take and retain, possess or land POP up to its cumulative limit north of 40°10' N. lat., even if POP were a part of the landings from minor slope rockfish taken and retained south of 40°10' N. lat.

(ii) *Fishing in both limited entry and open access fisheries—*

(A) *Fishing in limited entry and open access fisheries with different trip limits.* Open access trip limits apply to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear, except such provisions do not apply to IFQ species defined at §660.140(c), for vessels that are declared into the Shorebased IFQ Program (see §660.13(d)(5)(iv)(A) for valid Shorebased IFQ Program declarations). A vessel that fishes in both the open access and limited entry fisheries

is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is smaller than the limited entry limit, the open access limit may not be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit registered to it at any time during the trip limit period and uses open access gear, but the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear.

(B) *Limited entry permit restrictions for vessels fishing in the open access fishery—*

(1) *Vessel registered to a limited entry trawl permit.* To participate in the open access fishery, described at part 660, subpart F, with open access gear, defined at §660.11, a vessel registered to a limit entry trawl permit must make the appropriate fishery declaration, as specified at §660.14(d)(5)(iv)(A). In addition, a vessel registered to a limit entry trawl permit must remove the permit from their vessel, as specified at §660.25(b)(4)(v), unless the vessel will be fishing in the open access fishery under one of the following declarations specified at §660.13(d):

(i) Non-groundfish trawl gear for pink shrimp,

(ii) Non-groundfish trawl gear for ridgeback prawn,

(iii) Non-groundfish trawl gear for California halibut,

(iv) Non-groundfish trawl gear for sea cucumber,

(v) Open access Dungeness crab pot/trap gear,

(vi) Open access HMS line gear,

(vii) Open access salmon troll gear,

(viii) Open access Coastal Pelagic Species net gear.

(2) *Vessel registered to a limited entry fixed gear permit.* To participate with open access gear, defined at §660.11, subpart C, a vessel registered to a limit entry fixed gear permit must make the appropriate open access declaration, as specified at §660.14(d)(5)(iv)(A).

[75 FR 60897, Oct. 1, 2010, as amended at 75 FR 78382, Dec. 15, 2010; 75 FR 82301, Dec. 30, 2010; 76 FR 27530, May 11, 2011; 76 FR 53835, Aug. 30, 2011; 76 FR 74738, Dec. 1, 2011; 77 FR 28507, May 15, 2012]